

PREHEARING ORDER OF COMMISSION

Objection filed by the International Union of Operating Engineers, Local 513, on April 7, 2005, to Annual Wage Order No. 12, pertaining to building construction prevailing wage rate for the occupational title of Group II Operating Engineers in Section 012, Butler County (Objection No. 009); issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 9, 2005.

I. Prehearing Conference

Pursuant to 8 CSR 20-5.010(3)(A) and in connection with the above-referenced objection, the Labor and Industrial Relations Commission (the "Commission") ordered a prehearing conference to take place on May 2, 2005, for the purpose of aiding in the disposition of its upcoming hearing. The following were present at the prehearing conference: Assistant Attorney Generals Michael Pritchett and Ryan Bertels, counsel for the Division of Labor Standards (the "Division"); James J. Boeckman, for the Division; and Jamie L. Reyes-Jones, counsel for the International Union of Operating Engineers, Local 513 (the "Objector").

Brad Johnson and Susan Venturella, counsel for the Commission, were also present at the prehearing conference. Brad Johnson was the Commission's designated representative and presided over the prehearing conference.

II. Prefiled Testimony and Exhibits

The parties submitted the following evidence at the prehearing, all in accordance with the procedures that the Commission generally follows at its hearing, as set out in 8 CSR 20-5.010(4).

For the Division:

The prepared testimony, with accompanying attachments, of **James J. Boeckman**, Assistant Director of the Division.

For the Objector:

The prepared testimony of **John Saunders**, business representative for the Cape Girardeau office of the Objector.

Contractor's Report of Construction Wage Rates for the period January 1, 2004, through December 31, 2004 (together with attachments), as certified by **John Saunders**.

Contractor's Report of Construction Wage Rates for the period May 1, 2004, through December 31, 2004 (together with attachments), as certified by **Charles A. Walker**.

The Objector indicated it had no foundational objections to the Division's evidence. The Division, too, voiced no foundational objections to the Objector's evidence. The parties further advised that Mr. Boeckman, Mr. Saunders, and Mr. Walker would be present at the scheduled hearing for examination. (The Commission issued a subpoena to compel Mr. Walker's attendance for the hearing.)

III. Issue for the Hearing

The Objector is challenging the accuracy and reliability of contractor reports upon which the Division relied in determining the wage rate for Group II Operating Engineers in Butler County. More specifically, the Objector alleges that the applicable contractor report from C.A. Walker Construction Co. Inc. is based on conjecture and does not accurately reflect any hours worked during 2004 for Group II Operating Engineers. Consequently, it contends that the only accurate records pertaining to such classification of workers show that a greater number of hours were worked at the rate of \$23.37 per hour plus fringe benefits totaling an additional \$13.80 per hour.

The Division indicated that as of the time it made its applicable determination of wage rate, nothing in the contractor reports submitted indicated they were unreliable or inaccurate and that those reports showed that the greatest number of hours worked by Group II Operating Engineers in Butler County during 2004 were worked at the lower rate (\$15.00 per hour) established in Annual Wage Order No. 12.

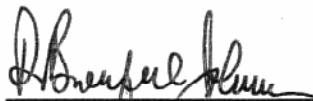
IV. Hearing Information

The hearing before the Commission is scheduled for 10:00 a.m. on May 16, 2005 (and May 17, 2005, if additional time is needed). Counsel for the parties indicated they were available both days and would be in attendance. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, Jefferson City, Missouri, in the second floor conference room.

The Commission's undersigned designated representative has prepared and executed this order in accordance with 8 CSR 20-5.010(3)(B).

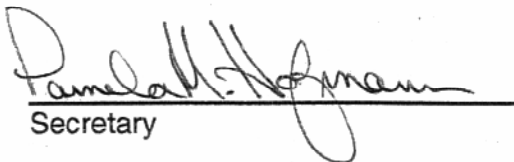
Given at the City of Jefferson, State of Missouri, this 6th day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



D. Bradford Johnson
Designated Representative

Attest:


Secretary